

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO-1783-2013 (O&M)

Date of Decision: July 25, 2019

Punjab State Warehousing Corporation

Appellant

Versus

M/s Ganeshay Overseas Industries Ltd and others

Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. R.Kartikey, Advocate
for respondent No. 1 to 4.

JAISHREE THAKUR, J. (Oral)

This is an appeal that has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'The Act') seeking to challenge the order of the Additional District Judge, Ludhiana dated 10th December, 2012 whereby the objections under Section 34 of the Act, filed by the appellant have been dismissed and the award of the Arbitrator has been upheld.

In brief, a few facts to be noted are that a milling agreement was executed between the appellant and M/s GOI Limited-respondent No.1 herein, through one of its Directors on 20th October, 2003. On account of a dispute that arose between the parties the matter was referred for settlement of the dispute to the Arbitrator who gave his award dated 22nd Feb., 2008.

The Arbitrator taking into account the compromise that was effected between the parties came to hold that the claim of the appellant herein seems to be satisfied and that nothing was due to the appellant from the respondents. This award was challenged by filing objection under Section 34 of the Act, which was dismissed leading to filing of the present appeal.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant points out that during the pendency of the proceedings before the Arbitrator the matter was compromised between the parties to the extent that the principal amount was accepted, leading the parties to refer the claim regarding the interest to the Arbitrator to settle. In this regard he placed reliance upon the affidavit furnished by Mr. Janak Raj, one of the Directors of the company, wherein it has been affirmed that the decision of the Arbitrator regarding the interest claim of Punjab State Warehousing Corporation shall be binding. The exact wording reads as - *“The decision of the Arbitrator regarding the interest claim of PSWC shall be binding on us”*.

It is argued that question of interest liable to be paid still survives and, therefore, the Arbitrator has erred in holding that the claim had been settled. It is further argued that the Arbitrator had been made aware of the compromise and the settlement by a letter addressed to him dated 22nd November, 2007 which is available with the pleadings of the present appeal as Annexure A3.

Per contra Mr. R. Kartikeya, learned counsel for the respondents would submit that there is no infirmity with the award of the

Arbitrator and that he had taken into consideration the compromise that had arrived at and rightly came to the conclusion that the amount was settled.

I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case and find that the Arbitrator has not appreciated the affidavit so furnished by one of the Directors of the Company. A perusal of the said affidavit which is available on the record as Annexure A2 would clearly reflect that the Director had deposited an amount of ₹7,21,762/- as the principal amount and had in no uncertain terms agreed that the decision of the Arbitrator regarding the interest claimed would be binding upon them, meaning thereby that the question of interest payable on the principal amount was still to be adjudicated upon by the Arbitrator. The Arbitrator was made aware of the contents of the affidavit furnished as would be evident from Annexure A3 which is a letter addressed to him which clearly reflects that principal amount has been recovered, however, the decision of the Arbitrator regarding the interest would be binding upon the miller. In such a situation, when both parties agree that the question of interest was still to be adjudicated and the miller himself had furnished an affidavit that he would be bound by the decision of the Arbitrator, it could not be said that the matter stood settled. Consequently the appeal is allowed. The award of the Arbitrator and the order of the Additional District Judge, Ludhiana are set aside and the matter is remanded back to the Managing Director of the appellant corporation to appoint an Arbitrator from the panel so prepared in terms of the agreement.

Mr. Kartikeya, learned counsel appearing on behalf of the respondents also submitted that the affidavit that had been procured under duress so that the respondent firm is able to receive a fresh consignment for milling. The argument as has been raised by Mr. Kartikeya, Advocate regarding the affidavit having been obtained under duress is not sustainable in the opinion of the Court but it is left open to the parties to agitate the same before the Arbitrator.

July 25, 2019

seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No